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AC/CB, NP/CBM, VC/CCB, L/ACV, IO/S  
SECDEF FOR OSD/ISP  
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COMMERCE FOR BIS (GOLDMAN)  
NSC FOR CHUPA  
WINPAC FOR FOLEY

E.O. 12958: N/A

TAGS: PARM PREL CWC

SUBJECT: CHEMICAL WEAPONS CONVENTION (CWC): ARTICLE VI

BILATS WRAP-UP

REF: A. A. L/VER/ODV/73619/03

- IB. 11 JULY 2003
- IC. B. NACS# 140630
- ID. 7 AUGUST 2003
- IE. C. NACS# 139498
- IF. 30 JUNE 2003
- IG. D. NACS# 129617
- IH. 14 AUGUST 2002
- II. E. STATE 250474

This is CWC-102-03.

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Background  
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I1. US Del met with Per Runn (Deputy Director, Verification Division), Faiza Patel-King (Verification Division), Alexandru Dolea (Officer, Industry Verification Branch), and Cinthia Echavarria (Senior Policy Officer, Policy Review Branch) of the OPCW on 1 Oct 03 to discuss a variety of Article VI issues. The Del consisted of: Rick D'Andrea (State), Larry Denyer (Commerce-TCD), Gary Mallard (Commerce-NIST), and Brandon Williams (Commerce Rep - Del). Ref A proposed a meeting between the US and Technical Secretariat (TS) to discuss Article VI issues. Ref B

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provided US agreement to the meetings. The following topics were discussed:

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Sampling and Analysis Policy  
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I2. The Del inquired on the status of TS policy development regarding the use of sampling and analysis during industry inspections. Runn expressed that the TS's sampling and analysis is viewed as just one of the many inspection team tools available for successfully executing industry inspections and that there are no preset conditions that would mandate sampling and analysis. He indicated that this tool, however, is much more expensive and logistically difficult to use than other such tools. Therefore, the TS is seeking to maximize limited resources. In particular, the TS is investigating how to more regularly deploy, at a minimum, sample collection and preparation equipment with teams to allow this tool to be available to them. On balance, however, the TS is formulating directives to TS Inspection Team Leaders which allow for flexibility with respect to sampling and analysis and which take into account operational considerations and alternative methods of demonstrating compliance which achieve the same degree of confidence and validity as sampling and analysis, but may be less intrusive to the inspected site. The TS made clear to Del that sampling and analysis will not be conducted on a presumption of use, or 'blank check' basis, during industry inspections. The TS agreed to provide regular updates to Del regarding development of their sampling and analysis policy.

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Schedule 1 Chemical Activity  
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I3. At the outset of discussions, the U.S. and TS agreed to disagree on the CWC requirements for declaring Schedule 1 facilities. The TS view is that 1) once declared, Schedule 1 facilities remain inspectable unless a State Party formally removes the plant site from the list of inspectable facilities, and 2) annual declarations are required for activities such as storage and consumption of Schedule 1 chemicals even if there is no annual production above 100 grams. The U.S. position is that no declarations are required from facilities that produce Schedule 1 chemicals below the 100-gram threshold in a given year. The TS had questions for Del concerning declaration requirements in the US CWC Regulations (CWCR) for facilities that fall under paras 11 and 12 of Part VI of the Verification Annex. The TS

perceives these facilities as "jumping on and off" the inspectable list because the CWCR requires declarations only for facilities that exceed applicable declaration thresholds.

The TS presented a number of potential solutions to the "problem." Only one TS idea, however, seemed to be a workable solution in light of CWCR requirements and the 180-day advance notification issue: a "nil" declaration provided by the USG for such facilities that produce under the 100 g threshold and, as such, do not make an annual declaration to the USG. The TS will pursue further discussions on the 180-day issue.. The TS still feels, however, that the question of inspectability is open regardless of the below-threshold activity.

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Sequential Inspections  
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14. The TS presented the results of several surveys it carried out in 1998, 2000, and 2003 of States Parties concerning support for sequential industry inspections. As a result of the TS's optimization and efficiency initiative, the TS is now requesting other dissenting States Parties to reconsider their opposition to sequential inspections in the hopes of maximizing available resources. To allay State Party concerns that sequential inspections could drive the selection of sites for inspections, the TS outlined the two-tier process of site selection. First, the TS draws plant sites for inspection, followed by ordering inspections in consideration of sequential inspections, where possible. The TS assured the Del that the confidentiality problems experienced during the only sequential industry inspections held in the U.S. were isolated incidents. To address U.S. confidentiality concerns, the TS offered to develop formal

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agreements with States Parties to address particular confidentiality, administrative or logistical concerns. For

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example, the TS offered to craft an agreement that limits sequential inspections to a one-week time period, accommodates technical equipment or additional point-of-entry/exit procedures, and restricts sequential inspections to only intra-state inspections. The TS also committed to provide a copy of their confidentiality procedures to the U.S. for review. The TS closed the meeting by asking the Del what our ideas were on conducting sequential inspections at plant sites located on the same industrial complex. Del noted that such an approach would appear to end-run the selection predictability process and appears intended to short-cut the plant/plant site delineation issue to essentially conduct one inspection at an industrial complex (not necessarily one plant site). Del also noted problems associated with 'bleeding' of information and issues between plant sites.

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Facility Agreements  
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15. Del and TS briefly discussed the scheduled facilitation on the need for and format of Schedule 2 facility agreements.

The TS indicated their preference for a facilitation focused on format rather than the establishment of criteria for a State Party to opt-out of negotiating facility agreements. Del signaled our support for such a format-oriented facilitation. The TS also mentioned that they are considering the use of a form to collect risk data rather than wrestle with what they called the "big format." Del reserves judgment on the utility of such an approach until the form is seen and reviewed.

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Original Records  
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16. There was general discussion about requirements for the provision of "original records" during industry inspections. The TS acknowledged that with more and more companies moving to purely electronic recordkeeping systems, the idea of original paper batch tickets and documents are no longer a guarantee. The TS echoed the Del's observation that the real issue is providing the inspection team with records that can adequately be authenticated, regardless of their format. The Del and TS agreed that, in cases where the actual, "original" records are not on-hand and copies or other authentic records as identified in the CWCR are provided, that authentic records are acceptable.

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Absence of Schedule 1 Methodology  
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17. The Del questioned the TS on its progress on developing internal guidelines on verifying the absence of Schedule 1

chemicals during industry inspections. Runn noted that the TS is currently formulating directives to TS Inspection Team

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Leaders which allow for flexibility in pursuing specific and technical questions where necessary and related to verifying the absence of Schedule 1 chemicals and for teams to 'cease and desist' when there are not specific questions, technical issues or ambiguities. Similar to sampling and analysis, there was a shared desire to avoid a 'blank check' approach in which teams would pursue unnecessary lines of questions. There was also a shared desire to balance against a checklist that might provide a roadmap to States Parties to evade detection of clandestine activities. Del indicated, however, that specific documentation or guidelines would need to be reviewed to ensure progress is being made in this area and reminded the TS that if progress is not made, the U.S. is contemplating moving, based on the requirements articulated in the Report of the First Review Conference, to remand the issue for decision by the industry cluster group.

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Next Steps  
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18. The TS expressed its appreciation for these consultations and their desire for further talks. Topics for future consultations include the 90-day window prior to receipt of annual declarations of past activities during which other chemical production facilities are not inspectable, and access to records based on declarations of anticipated activities. Del agreed in principle to further consultations, but there was no discussion of when these talks would be held.

19. Javits sends.

SOBEL